

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN THOMAS,

Plaintiff,

v.

Case No. 15-11261
HON. TERRENCE G. BERG

WILLIAM H. HACKEL, III,

Defendant.

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**ORDER DENYING PLAINTIFF'S
MOTION FOR CERTIFICATE OF APPEALABILITY (DKT. 9)**

This matter is before the Court on Plaintiff John Thomas' July 30, 2015 motion for a certificate of appealability. (Dkt. 9.) On May 27, 2015, the Court dismissed his 42 U.S.C. § 1983 civil rights complaint on grounds that it failed to state a claim upon which relief may be granted and because Defendant William H. Hackel, III, a Michigan state court judge, was entitled to judicial immunity (Dkt. 5, p. 5). The Court denied Plaintiff's motion for reconsideration on June 30, 2015 (Dkt. 8), and Plaintiff now requests a certificate of appealability (Dkt. 9) and has filed a notice of appeal (Dkt. 10). Because a certificate of appealability is not required to appeal from an order denying relief in a § 1983 action, Plaintiff's motion will be **DENIED.**

Under the Antiterrorism and Effective Death Penalty Act of 1996, a certificate of appealability is required to appeal a judgment in a habeas corpus

action where the petitioner's complaint pertains to detention arising out of a state court process. 28 U.S.C. § 2253(c)(1). A certificate of appealability, however, is not required to appeal from an order denying relief in a § 1983 action. *Johnson v. CCA-Northeast Ohio Correctional Center*, 21 Fed. App'x. 330, 332 (6th Cir. 2001); *see also Kincaid v. Ruhlman*, No. 13-13798, 2015 WL 349032, at *1 (E.D. Mich. Jan. 23, 2015) (certificate of appealability unnecessary for prisoner civil rights appeal); *Rivera v. Granholm*, No. 08-12722, 2009 WL 650374, at *1 (E.D. Mich. Mar. 13, 2009) (certificate of appealability not required for prisoner civil rights appeal).

Because there is no need for a certificate of appealability to appeal a § 1983 case, Plaintiff's motion for a certificate of appealability is **DENIED**. It should be noted, however, that the Court concluded in its Order dismissing Plaintiff's Complaint for failure to state a claim that an appeal from its Order could not be taken in good faith (Dkt. 5, p. 5). Consequently, Plaintiff is not permitted to proceed in forma pauperis on appeal. 28 U.S.C. § 1915(a)(3).

SO ORDERED.

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Dated: August 5, 2015

Certificate of Service

I hereby certify that this Order was electronically submitted on August 5, 2015, using the CM/ECF system, which will send notification to each party.

By: s/A. Chubb
Case Manager